

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 96-117005

Employee: Linda Pharris, dec.
Substituted Party: Casey Pharris, Sr., widower
Employer: Banta Foods, Inc.
Insurer: Self-Insurer
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Settled)
Date of Accident: September 20, 1996
Place and County of Accident: Greene County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 10, 2007. The award and decision of Administrative Law Judge Victorine R. Mahon, issued April 10, 2007, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 20th day of July 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Linda Pharris (deceased) Injury No. : 96-117005

Substituted Party: Casey Pharris, Sr., widower

Dependents: Not Applicable

Employer: Banta Foods, Inc.

Additional Party: Second Injury Fund (Settled)

Insurer: Self Insured

Medical Fee Dispute: Dismissed

Hearing Date: January 30, 2007

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: VRM/meb

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: September 20, 1996.
5. State location where accident occurred or occupational disease was contracted: Greene County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee had debris thrown on her while she was performing paperwork.
12. Did accident or occupational disease cause death? No. Date of death? Employee died of unrelated causes on October 11, 2005.
13. Part(s) of body injured by accident or occupational disease: Lungs and Eyes.
14. Nature and extent of any permanent disability: 104 weeks of Permanent Partial Disability attributable to the eyes and 40 weeks of Permanent Partial Disability attributable to exacerbation of asthma.
15. Compensation paid to-date for temporary disability: \$2,700.00.
16. Value necessary medical aid paid to date by employer/insurer? \$1,191.65.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$270.00.
19. Weekly compensation rate: \$180.00.
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: \$25,920.00.

Unpaid medical expenses: None.

Permanent Partial Disability:

For the eyes:

104 weeks

(26

percent of the body as a whole or about 37 percent of each eye)

For permanent aggravation of asthma:

40 weeks

(10 percent of the body as a whole)

Total: 144 weeks X \$180.00 = \$25,920.00)

22. Second Injury Fund liability: Settled.

23. Future requirements awarded: None.

Said payments are due immediately and are subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Larry Pitts.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Linda Pharris (deceased)

Injury No. : 96-117005

Substituted Party: Casey Pharris, Sr., widower

Dependents: Not Applicable

Employer: Banta Foods, Inc.

Additional Party: Second Injury Fund (Settled)

Insurer: Self Insured

Medical Fee Dispute: Dismissed

Hearing Date: January 30, 2007

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Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

INTRODUCTION

The hearing for final award was held January 30, 2007. Banta Foods, Inc., a self- insured employer, was represented by Linda Johnson. Employee, Linda Pharris, had filed a timely workers' compensation claim against Banta Foods, alleging an aggravation of asthma as a result of a work-related incident that occurred on September 20, 1996. She also claimed she contracted steroid-induced cataracts as a result of the medication prescribed for treatment of the aggravation of asthma. Larry Pitts and Jonathan Pitts represented Ms. Pharris until the date of her death on October 11, 2005.

Substitution of Party

On October 31, 2005, counsel for Ms. Pharris filed a suggestion of death and motion to substitute Casey Pharris, Sr., the widower of Linda Pharris, as the Claimant. The parties stipulated to the substitution of party. Mr. Pharris testified that he was married to Linda Pharris at the time of her death. The death certificate and marriage license were received into evidence. Based on the evidence admitted at the hearing and the parties' stipulation, the motion for substitution is sustained.

Direct Fee Dispute Dismissed

On March 6, 1998, Cox Medical Center filed a Notice of Services Provided & Request for Direct Payment in the amount of \$1,191.65 (HCP Ex. 1- 96-01849). Counsel for the Health Care Provider, Jason Schaefer, verbally moved to dismiss the medical fee dispute based on the representation of the Employer that the amount had been paid. The Medical Fee Dispute is dismissed.

Stipulations

The parties stipulate that Linda Pharris was an employee of Banta Foods, Inc., and was covered under the provisions of the Workers' Compensation Law at the time of a work accident on September 20, 1996. There is no issue with respect to venue, notice, or statute of limitations. Employee's average weekly wage was \$270.00, yielding Temporary Total Disability and Permanent Partial Disability rates of \$180.00.

Without objection from Claimant, the record remained open until February 14, 2007, to permit Employer to provide the following information: Employer furnished medical treatment in the amount of \$1,191.65 and paid Temporary Total Disability of \$2,700.00. As Claimant has not challenged these amounts, they are accepted as accurate.

Issues

Medical Causation

Liability for Unpaid Medical Aid and the Medicaid Lien of the State of Indiana

Nature and Extent of Permanent Partial Disability

Exhibits

The following exhibits were admitted without objection:

For Claimant:

- A Report of Injury
- B Claim for Compensation
- C Certified Medical Records
- D Medical Report – Dr. David T. Volarich, dated February 13, 2001
- E Medical Report – Dr. W. Howard Lewin, dated November 11, 2001
- F Medical Report/Letter – Dr. Jonathan S. McGlothan
- G Indiana Medicaid Lien for \$4,031.95, dated February 12, 2006
- H Deposition of Linda Pharris, taken May 16, 2000 and July 14, 2000
- I Marriage License
- J Death Certificate dated October 11, 2005

For Employer:

- 1 Medical Report – Dr. Myron H. Jacobs, dated May 5, 2003
- 2 *Cataract in the Adult Eye* – Published by the American Academy of Ophthalmology, Cataract and Anterior Segment

5. *Cataract Surgery and Intraocular Lenses, A 21st – Century Perspective*, - 2nd Edition – Published by the American Academy of Ophthalmology – excerpts pages 16 – 19. ^[1]

For the Health Care Provider:

HCP 1 - Notice and Request for Direct Pay dated March 6, 1998, with acknowledgement

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Linda Farris was 49 years of age when her deposition was taken on May 16 and July 14, 2000. Ms. Farris was a very large woman with multiple preexisting difficulties that had led to her reliance on a wheelchair for mobility. Her job at Banta Foods was sedentary. On September 20, 1996, Ms. Pharris was sitting at her work desk performing some paperwork when another employee threw dust and debris on her. The debris came from a remodeling job that was taking place at Banta Foods. The act startled Ms. Pharris and she inhaled the dust and debris particles. The dust and debris covered her nose and face and she could hardly breathe. Ms. Pharris alleges that the incident permanently aggravated her asthma.

While Ms. Pharris had suffered from asthma in the past and had been prescribed steroids, she stated that her condition improved after moving to Springfield to the extent that she was not even seeing a physician for her condition. Moreover, she indicated that asthma never previously had interfered with her work. After the incident at Banta Foods, however, her condition worsened. Ms. Pharris became hoarse and so weak that she could not work. She tried a short stint at a telephone answering service, but was unsuccessful in maintaining employment there. After the incident on Banta Foods, Ms. Pharris again was dependent on steroids. Prior to the incident at Banta Foods, Ms. Pharris never required glasses, but thereafter she developed vision problems. The use of steroids caused her blood sugar to rise, and Ms. Pharris alleged that the steroids caused cataracts. Ms. Pharris said she lost stamina, and while she could tend to most of her personal hygiene, she needed assistance in dressing.

Ms. Pharris had two prior workers' compensation claims. She had broken her foot while working at Indiana State University in the 1970s. She also injured both hands while working for CBS in the mid 1980s. She suffered injuries in two automobile accidents as well. Ms. Pharris has settled with the Second Injury Fund and its liability is not in issue.

Expert Evidence - Asthma

Claimant offered the report of Dr. David T. Volarich who has examined Ms. Farris on February 13, 2001. He opined that the incident at work when Ms. Pharris inhaled dust and debris particles was a substantial contributing factor causing the aggravation of her preexisting reactive airways disease (asthma) that required extensive medical care. Dr. Volarich assigned a 20 percent Permanent Partial Disability to the body as a whole attributable to the aggravation of reactive airways disease causing status asthmaticus. "This rating accounts for ongoing shortness of breath, limited endurance, the need to take multiple medications as well as oxygen supplementation." (Ex. D). Dr. Volarich said Ms. Pharris suffered a 15 percent Permanent Partial Disability due to her preexisting asthma that he said was under reasonably good control leading up to the work incident on September 20, 1996.

Dr. Myron H. Jacobs rendered an opinion on behalf of Employer (Ex. 1). He stated that “there appears to be no doubt that she had an exposure at work which caused a temporary worsening of her underlying asthma.” (Ex. 1, page 4). He agreed that the exacerbation of Mr. Pharris’ asthma required medical care, including hospitalization and three bronchoscopies. Dr. Jacobs noted that Ms. Pharris was treated for asthma with corticosteroids, antibiotics, and mobilized bronchodilators for several weeks following the work incident. He agreed that Ms. Pharris’ symptoms continued and required ongoing treatment for a “fairly prolonged period of time.” (Ex. 1, p. 1). But, he did not assign any Permanent Partial Disability as a result of the aggravation because he believed with proper treatment the patient returned to baseline status. While the physician found that Ms. Pharris’ lung function was approximately 70 percent and that this degree of asthma would represent a permanent disability, he did not find that any of the disability was related to the employee’s work. Dr. Jacobs believed any reduction in lung function since the date of the accident at Banta Foods on September 20, 1996, “would be minimal,” (Ex. 1, page 4), and attributable to aging.

Expert Evidence - Cataracts

Claimant presented the report of Dr. W. Howard Lewin, a retired clinical professor of ophthalmology, who diagnosed steroid-induced cataracts in each eye due to the workplace injury. Dr. Lewin confirmed from the medical records that Ms. Pharris had been prescribed Prednisone (a steroid) for her asthma since September 1996. When Ms. Pharris took steroids she suffered from blurred vision and elevated blood sugar. He said Ms. Pharris also suffered from glare and sensitivity to lights. He concluded that Ms. Pharris suffered visual acuity and efficiency losses in each eye. He assigned a biocular visual efficiency loss of 104.8 weeks.

Dr. Richard Wangelin examined Claimant’s eyes on June 18, 1999 (Ex. C, tab 12). Nothing in that medical record appears to question the diagnosis of steroid-induced cataracts.

The medical report or letter of Dr. Jonathan McGlothan indicates that he performed a slit-lamp biomicroscopy of Linda Pharris to determine the presence of cataracts on August 1, 2001. The results of the procedure are not entirely decipherable because a computer printout has been photocopied on top of the results (Ex. F). It appears that Dr. McGlothan found nuclear cataracts in at least one eye, but even this is not clear on the exhibit.

Employer argues in its brief that it is critical to determine the type of cataract, alleging that steroid use only causes posterior subcapsular cataracts (PCS), and not nuclear or cortical cataracts. In support of this position, Employer presented two medical articles on cataracts: *Cataract in the Adult Eye*, American Academy of Ophthalmology, 2006 (Ex. 2), and *Cataract Surgery and Intraocular Lenses A 21st-Century Perspective*, American Academy of Ophthalmology, 2006, p. 16-18 (Ex 5). ^[2]

Analysis

The law in effect at the time of Ms. Pharris’ injuries prescribe that it is to be broadly and liberally interpreted, extending its benefits to the largest possible class, and questions as to the right of compensation are to be resolved in favor of the employee. *Cochran v. Industrial Fuels & Resources, Inc.* 995 S.W.2d 489, 492 (Mo.App. S.D. 1999). Moreover,

accidents which aggravate or accelerate a preexisting disease or condition are compensable. *Gerleman v. Sterling Engineering Co.*, 629 S.W.2d 676, 678-79 (Mo. App. E.D. 1982). Keeping in mind these legal precepts, I find in favor of Claimant on both the issue relating to the permanency of the aggravation of asthma, and as to the medical-causal relationship of the cataracts.

Although he is not an expert in pulmonary medicine, I find Dr. Volarich more credible on the issue of whether Ms. Pharris suffered any permanency attributable to the aggravation of the asthma. A review of the medical records and Ms. Pharris' testimony reveals that she never returned to baseline following the incident at Banta Foods. At the time of her deposition in May and July of 2000, Ms. Pharris was using oxygen, inhalers, and a nebulizer and could not function independently in some facets of her life because of her lack of stamina. The overall impression from the medical records is that Ms. Pharris was never again as healthy as she was when she worked for Employer. I do not find credible the assertion that her loss of lung function was simply related to age.

As to the degree of permanency, I believe Dr. Volarich's rating is excessively high, keeping in mind that this is an aggravation of a condition that was preexisting. After reading all of the evidence, including a review of all of the medical records, I award a 10 percent Permanent Partial Disability due to the aggravation of the asthma.

With respect to the cataracts, Dr. Lewin is a reputable physician with an expertise in ophthalmology. Conversely, Employer presented no expert evidence. And, even though Claimant did not object to the admission of the Employer's medical articles as exhibits, such articles generally are not admissible as independent substantive evidence because they are hearsay offered to prove the truth of the matter asserted. *Wilson v. ANR Freight Systems, Inc.*, 892 S.W.2d 658 (Mo. App. W.D. 1994) overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003). Irrespective of their admissibility, I do not find Employer's Exhibits 2 and 5 persuasive.

I do not read the medical articles to stand for the proposition tendered by Employer. For instance, in Table 1 (Ex. 2), which is a list of "Risk Factors and Associations for Cataracts," the table indicates that inhaled corticosteroid use is a risk factor for PCS. But, the table also contains a category entitled "Subtypes not identified in study." And within the unidentified category of cataracts, inhaled corticosteroid use is said to pose an increased risk in patients aged 40 and older. On page 5 of Exhibit 2, the authors also state: "Long-term users of inhaled or oral corticosteroids are at high risk for cataract formation. Use of alternate medications may be a consideration for these patients." That statement is not restricted to only one type of cataract. Thus, while the article indicates that steroids are known to be a risk for posterior subcapsular cataracts, I do read the article as definitively stating that steroids are never a risk factor for other types of cataracts.

I find persuasive the opinion of Dr. Lewin. I award 104 weeks of permanent partial disability, which represents 26 percent of the body as a whole attributable to the cataracts, or approximately 37 percent of a each eye (37 % x 140 weeks = 51.8 weeks per eye).

Indiana Medicaid Lien

Claimant submitted a copy of a Medicaid Lien from the State of Indiana in the amount of \$4,031.95 (Ex. G).

The lien purportedly is for the payment of drugs and medical care beginning February 4, 2004 until Ms. Pharris' death. The records of the Division of Workers' Compensation do not indicate that any Medicaid lien has been filed with the Division. No witness testified that the bills paid by Indiana Medicaid were for treatment related to the work incident in 1996. The medical records admitted (Ex. C) pertain to treatment received prior to 2004. Although Employer did not object to the admission of the Medicaid lien, I find no stipulation that the bills are related to the 1996 work incident. Therefore, I do not make any award for payment of the Medicaid lien because I fail to find any evidence tying the expenditures to medical treatment for the work-related conditions.

SUMMARY

Employer shall pay to Claimant \$25,920.00 in Permanent Partial Disability to the body as a whole. This amount includes \$7,200.00 for aggravation of the asthma and \$18,720.00 attributable to steroid induced cataracts.

Claimant's attorneys shall receive 25 percent of the amounts awarded for necessary legal services rendered.

Date: April 18, 2007

Made by: /s/ Victorine R. Mahon
Victorine R. Mahon
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Patricia "Pat" Secret
Patricia "Pat" Secret
Director
Division of Workers' Compensation

[1] Although Claimant did not object to the admissibility of Exhibits 2 and 5, Claimant's counsel objected to giving the exhibits any weight.

[2] Multiple markings and highlights are present in the exhibits, particularly Exhibits F, 2, and 5. These exhibits were not altered by the Administrative Law Judge. The exhibits appear the same as they did when received into evidence.